

REMARKS

In the Office Action, the Examiner objected to claims 7 and 22, and rejected claims 1-6 and 8-21. By this paper, claims 1, 3, 5, 7, 9, 11-15, 19, 20, and 22 are amended to clarify certain aspects set forth in the claims. Claims 1-22 are pending in the present application and are believed to be in condition for allowance. In view of the foregoing amendments and the following remarks, Applicants respectfully request reconsideration and allowance of all pending claims.

Allowable Subject Matter

In the Office Action, the Examiner indicated that claims 7 and 22 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicants would like to thank the Examiner for indicating that claims 7 and 22 would be allowable in independent form. However, in view of the amendments set forth above and the remarks presented below, Applicants respectfully assert that all of the pending claims are in condition for allowance.

Claim Rejections under 35 U.S.C. § 102

In the Office Action, the Examiner rejected claims 1, 6, 13, and 17-20 under 35 U.S.C. § 102(e) as being anticipated by Mantha et al. (U.S. Pub. No. 2004/0023622, hereafter referred to as “the Mantha reference”). Applicants respectfully traverse this rejection.

Legal Precedent

Anticipation under Section 102 can be found only if a single reference shows exactly what is claimed. *See Titanium Metals Corp. v. Banner*, 227 U.S.P.Q. 773 (Fed. Cir.1985). For a prior art reference to anticipate under Section 102, every element of the claimed invention must be identically shown in a single reference. *See In re Bond*, 15 U.S.P.Q.2d 1566 (Fed. Cir.1990). That is, the prior art reference must show the *identical invention* “*in as complete detail as contained in the ... claim*” to support a *prima facie* case of anticipation. *Richardson v. Suzuki Motor Co.*, 9 U.S.P.Q. 2d 1913, 1920 (Fed. Cir. 1989) (emphasis added). Thus, for anticipation, the cited reference must not only disclose all of the recited features but must also disclose the *part-to-part relationships* between these features. *See Lindermann Maschinenfabrik GMBH v. American Hoist & Derrick*, 221 U.S.P.Q. 481, 486 (Fed. Cir.1984). Accordingly, Applicants need only point to a single element or claimed relationship not found in the cited reference to demonstrate that the cited reference fails to anticipate the claimed subject matter. A *strict correspondence* between the claimed language and the cited reference must be established for a valid anticipation rejection.

Moreover, Applicants submit that, during patent examination, the pending claims must be given an interpretation that is *reasonable* and *consistent* with the specification. *See In re Prater*, 162 U.S.P.Q. 541, 550-51 (C.C.P.A. 1969); *In re Morris*, 44 U.S.P.Q.2d 1023, 1027-28 (Fed. Cir. 1997); *see also* M.P.E.P. § 2111 (describing the standards for claim interpretation during prosecution). Indeed, the *specification* is “the primary basis for construing the claims.” *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1315 (Fed. Cir. 2005) (citations omitted). It is usually

dispositive. *See id.* Interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach. *See In re Cortright*, 49 U.S.P.Q.2d 1464, 1468 (Fed. Cir. 1999); *see also* M.P.E.P. § 2111. That is, recitations of a claim must be read as they would be interpreted by those of ordinary skill in the art. *See Rexnord Corp. v. Laliram Corp.*, 60 U.S.P.Q.2d 1851, 1854 (Fed. Cir. 2001); *see also* M.P.E.P. § 2111.01. In summary, an Examiner, during prosecution, must interpret a claim recitation as one of ordinary skill in the art would reasonably interpret the claim in view of the specification. *See In re American Academy of Science Tech Center*, 70 U.S.P.Q.2d 1827 (Fed. Cir. 2004).

Independent claims 1, 13 and 19

Independent claim 1 recites, *inter alia*, “A device for allocating power comprising: a power sharing module configured...to determine from the plurality of signals whether a *first industry standard wireless system* corresponding to a first wireless service has un-utilized transmission power; and a scheduler configured to receive an indication to allocate the un-utilized transmission power from the first wireless service of the *first industry standard wireless system* to a second wireless service of a *second industry standard wireless system* and utilize the indication to allocate the un-utilized transmission power for the second wireless service.” (Emphasis added).

Independent claim 13 recites, *inter alia*, “A method for allocating transmission power comprising: providing a first wireless *system* and a second wireless *system*....determining from the plurality of input signals whether the second wireless *system* may utilize transmission power from the first wireless *system*; and allocating transmission power to the second wireless *system* from the first wireless *system*.” (Emphasis added). Independent claim 19 recites, *inter alia*, “A method for

allocating power, the method comprising the acts of: receiving a plurality of input signals corresponding to at least one predicted power allocation for a first wireless *system* and at least one current power allocation for the first wireless *system* and a second wireless *system*....providing an indication to allocate non-utilized transmission power from the first wireless *system* to the second wireless *system* to a scheduler.” (Emphasis added).

In sharp contrast, the Mantha reference does *not* disclose power allocation between two systems, much less power allocation between first and second industry standard wireless systems, as set forth in claim 1. The Mantha reference only discloses power allocation between two services, *i.e.*, voice and data. Specifically, the Mantha reference describes a system 20 having a base station 24 which provides a downlink 40 that includes signaling channels, voice channels, and data channels. *See* FIG. 1; paragraph [0048]. The downlink 40 may be based on CMA, for example. *See id.* The base station 24 allocates power from the voice channels to the data channels. *See* paragraphs [0056]-[0069]. However, the voice and data channels cannot reasonably be considered the equivalent of the first and second *systems* recited in claims 1, 13 and 19. Indeed, one of ordinary skill in the art would understand the data and voice *services* referred to in the Mantha reference to be merely two separate services of a *single* system. As such, the Mantha reference discloses power allocation within CDMA system but not between a first and second system as set forth in the present claims.

As such, Applicants respectfully assert that a *prima facie* case for anticipation under Section 102 is not supported by the Mantha reference with respect to claims 1, 13 and 19. Accordingly,

Applicants respectfully request withdrawal of the Section 102 rejection and allowance of independent claims 1, 13 and 19, as well as all claims depending therefrom.

Claim Rejections under 35 U.S.C. § 103(a)

In the Office Action, the Examiner rejected claims 2-5, 14-16, and 21 under 35 U.S.C. § 103(a) as being unpatentable over the Mantha reference in view of Jeon et al. (U.S. Pub. No. 2004/0253928, hereafter referred to as “the Jeon reference”); rejected claims 8 and 10 under 35 U.S.C. § 103(a) as being unpatentable over the Mantha reference in view of Kang (U.S. Pub. No. 2001/0016503, hereafter referred to as “the Kang reference”); rejected claim 9 under 35 U.S.C. § 103(a) as being unpatentable over the Mantha reference in view of the Kang reference and further in view of Hongo et al. (U.S. Pub. No. 2003/0022639, hereafter referred to as “the Hongo reference”); and rejected claims 11-12 under 35 U.S.C. § 103(a) as being unpatentable over the Mantha reference in view of the Kang reference and further in view of the Jeon reference.

Applicant respectfully traverses the rejections. The burden of establishing a *prima facie* case of obviousness falls on the Examiner. *Ex parte Wolters and Kuypers*, 214 U.S.P.Q. 735 (B.P.A.I. 1979). In establishing a *prima facie* case for obviousness, it is often necessary “to look to interrelated teachings of multiple patents, the effects of demands known to the design community or present in the market place; and the background knowledge possessed by a person having ordinary skill in the art.” *KSR Int’l Co. v. Teleflex, Inc.* No. 04-1350, slip op. at 14 (U.S. April 30, 2007). Indeed, “the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill

in the pertinent art resolved. Against this background the obviousness or nonobviousness of the subject matter is determined.” *Id.* at 2 (quoting *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). This analysis should be made explicit. *Id.* at 14 (citing *In re Khan*, 441 F.3d 977, 988 (Fed. Cir. 2006)) (“[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness”)).

Additionally, a claim having several elements is *not* proved obvious merely by demonstrating that each of its elements was known in the prior art. *Id.* As such, the obviousness inquiry does not hinge on demonstrating that elements were known in the art. Rather, the obviousness inquiry focuses on whether the claimed subject matter would have been obvious to persons having ordinary skill in the art in view of the demands and practices of the design community at the time of filing of the application. *See id.*

Independent claim 8

Independent claim 8 recites, *inter alia*, “A base station comprising...a first baseband *system* that communicates with a first group of the plurality of wireless units via a first plurality of communication channels; and a second baseband *system* that communicates with a second group of the plurality of wireless units via a second plurality of communication channels, the first and second baseband systems sharing a common platform, the second baseband system comprising...a scheduler configured to receive an indication to allocate un-utilized transmission power to the second baseband *system* from the first baseband *system* and to utilize the indication

to allocate un-utilized transmission power for the second plurality of communication channels.”
(Emphasis added).

In sharp contrast, the Mantha reference and the Kang reference, taken alone or in hypothetical combination, do not disclose allocation of un-utilized transmission power to a second baseband system from a first baseband system as set forth in claim 8. Specifically, as set forth in detail above, the Mantha reference only discloses allocating power from a voice service to a data service within a *single system*. Therefore, the Mantha reference fails to disclose allocation of power to a second baseband system from a first baseband system.

The Kang reference fails to overcome the deficiency of the Mantha reference in this regard. Specifically, the Kang reference is directed decreasing deterioration of call quality in a CDMA system. *See* Kang paragraph [0020]. As such, the Kang reference does not disclose allocation of power to a second baseband system from a first baseband system as set forth in claim 8. Therefore, the Mantha reference and the Kang reference, taken alone or in hypothetical combination, fail to disclose all the elements of claim 8.

Additionally, the Mantha and Kang references do not disclose a first system and a second system sharing a common platform, as set forth in claim 8. Indeed, there is only a single system discussed in each reference. For example, the Mantha reference discusses the downlink 40 being one of a number of protocols that may be used, but never mentions more than one *system* being used. Similarly, the Kang reference only discloses *a* CDMA system. There is no mention of two

systems on a shared platform. As such, the Kang and Mantha references, taken alone or in hypothetical combination fail to support a *prima facie* case for obviousness under Section 103.

Accordingly, Applicants respectfully request withdrawal of the Section 103 rejection of independent claim 8 and all claims dependent therefrom. Furthermore, Applicants respectfully request allowance of independent claim 8 and all claims dependent therefrom.

Claims 2-5, 11-12, 14-16 and 21

Applicants respectfully assert that claims 2-5, 11-12, 14-16 and 21 are allowable based on their dependency from allowable independent claims. As discussed above with respect to the independent claims, the Mantha reference and the Kang reference, taken alone or in hypothetical combination, fail to disclose allocation of power from a first system to a second system. The Jeon reference fails to obviate the deficiencies of the Mantha reference and the Kang reference. Similar to the Mantha reference, the Jeon reference is directed to power allocation between a real-time service, such as voice or video, and a non-real-time service, such as a packet service of a single system. *See* Jeon paragraphs [0005]-[0007] and [0028]. The Jeon reference, however, does not disclose power allocation between two systems as set forth in the claims of the present application. As such, the Jeon reference fails to obviate the deficiencies of the Mantha reference and the Kang reference. Accordingly, Applicants respectfully request withdrawal of the Section 103 rejection and allowance of claims 2-5, 11-12, 14-16 and 21.

Claim 9

Applicants respectfully assert that claim 9 is allowable based on its dependency from claim 8. As discussed above, the Mantha and Kang references, taken alone or in hypothetical combination, fail to disclose the allocation of transmission power to a second baseband service system from a first baseband service system as set forth in claim 8. The Hongo reference fails to obviate the deficiencies of the Mantha and Kang references with respect to independent claim 8. Specifically, the Hongo reference is directed to a peak limiter. *See* paragraph [0001]. The Hongo reference, however, does not disclose allocation of transmission power to a second baseband system from a first baseband system as set forth in claim 8. Accordingly, the Hongo reference fails to obviate the deficiencies of the Mantha and Kang references. Accordingly, Applicants respectfully request withdrawal of the rejection and allowance of claim 9


In view of the foregoing discussion, Applicants respect withdrawal the Section 103 rejection and allowance of all pending claims.

Conclusion

Applicants respectfully submit that all pending claims should be in condition for allowance. However, if the Examiner wishes to resolve any other issues by way of a telephone conference, the Examiner is kindly invited to contact the undersigned attorney at the telephone number indicated below.

Respectfully submitted,

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